

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

CALEB WESLEY BURCH, *on behalf of
himself and all others similarly situated,*

Plaintiff

v.

V.K. MECHANICAL, XL PLUMBING OF
NEW YORK, INC., XL PLUMBING, INC.,
Xcel PLUMBING OF NEW YORK, INC.,
Xcel PLUMBING & HEATING OF NEW
YORK, INC., APPLE PLUMBING, INC., and
WILLIAM JOHNSTON,

Defendants.

**Declaration of Patricia
Kakalec in Support of
Request for Certificate of
Default**

No: 16-cv-3700 (ADS) (SIL)

Patricia C. Kakalec, an attorney duly licensed to practice law in the State of New York, does hereby declare pursuant to 28 U.S.C. § 1746 that the following facts are truthful:

1. I am a member of Kakalec & Schlanger, LLP, counsel for Plaintiff in the above-referenced action, and, as such, am familiar with the procedural history of this case.
2. I make this Declaration pursuant to Fed. R. Civ. P. 55(a) and Local Civil Rule 55.1 for purposes of obtaining a certificate of default as to all defendants.
3. This action was commenced on July 1, 2016 and seeks redress for violations of the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.*, and the New York Labor Law.
4. The time for Defendants V.K. Mechanical, XL Plumbing of New York, Inc., XL Plumbing, Inc., Xcel Plumbing of New York, Inc., Xcel Plumbing & Heating of New York, Inc., Apple Plumbing, Inc., and William Johnston, to answer or otherwise move with respect to the Complaint has expired.
5. Defendants V.K. Mechanical, XL Plumbing of New York, Inc., XL Plumbing, Inc., Xcel Plumbing of

New York, Inc., Xcel Plumbing & Heating of New York, Inc., Apple Plumbing, Inc., and William Johnston have not answered or otherwise moved with respect to the Complaint, and the time for them to do so has not been extended.

6. None of Defendants V.K. Mechanical, XL Plumbing of New York, Inc., XL Plumbing, Inc., Xcel Plumbing of New York, Inc., Xcel Plumbing & Heating of New York, Inc., Apple Plumbing, Inc., or William Johnston are infants or incompetents.
7. None of Defendants V.K. Mechanical, XL Plumbing of New York, Inc., XL Plumbing, Inc., Xcel Plumbing of New York, Inc., Xcel Plumbing & Heating of New York, Inc., Apple Plumbing, Inc., or William Johnston are presently in the military service of the United States as appears from facts in this litigation.
8. Defendants V.K. Mechanical, XL Plumbing of New York, Inc., XL Plumbing, Inc., Xcel Plumbing of New York, Inc., Xcel Plumbing & Heating of New York, Inc., Apple Plumbing, Inc., and William Johnston are indebted to Plaintiff Caleb Burch and others similarly situated in the following manner:
 - a. Defendants failed to pay Mr. Burch and others similarly situated for all hours worked; and
 - b. Defendants failed to pay Mr. Burch and others similarly situated overtime pay as required by law; and
 - c. Defendants required Mr. Burch and others similarly situated to incur work expenses which constituted illegal wage deductions under the New York Labor Law.
9. I have served a copy of the summons and complaint in this action on each defaulting Defendant. In particular:
 - a. I caused Defendant William Johnston to be served with a copy of the summons and complaint in this action by having a process server leave them with a person of suitable age and discretion, to wit, Mark Wojeciski, a co-worker of Mr. Johnston's, at Mr. Johnston's place of business at 45 Kean Street, West Babylon, New York 11708 on July 19, 2016. The process server completed service by mailing a true and correct copy of the summons and complaint by first class mail to Mr. Johnston's place of business on July 21, 2016. An affidavit of service as to Defendant

William Johnston is attached as **Exhibit A**.

- b. I caused Defendant V.K. Mechanical to be served with the summons and complaint by serving them on Vincent Trimarco, an agent who stated that he was authorized to accept service on behalf of V.K. Mechanical, at 1038 West Jericho Turnpike, Smithtown, New York 11787 on July 17, 2016. An affidavit of service as to Defendant V.K. Mechanical is attached as **Exhibit B**.
- c. I caused Defendant XL Plumbing of New York, Inc. to be served with the summons and complaint in this action pursuant to New York Business Corporation Law § 306 by delivering the summons and complaint to an agent of the Office of the Secretary of State of the State of New York and leaving them with her on August 5, 2016. An affidavit of service as to Defendant XL Plumbing of New York, Inc. is attached as **Exhibit C**.
- d. I caused Defendant XL Plumbing Inc. to be served with the summons and complaint in this action pursuant to New York Business Corporation Law § 306 by delivering the summons and complaint to an agent of the Office of the Secretary of State of the State of New York and leaving them with her on August 5, 2016. An affidavit of service as to Defendant XL Plumbing Inc. is attached as **Exhibit D**.
- e. I caused Defendant Xcel Plumbing of New York, Inc. to be served with the summons and complaint in this action pursuant to New York Business Corporation Law § 306 by delivering the summons and complaint to an agent of the Office of the Secretary of State of the State of New York and leaving them with her on August 5, 2016. An affidavit of service as to Defendant Xcel Plumbing of New York, Inc. is attached as **Exhibit E**.
- f. I caused Defendant Xcel Plumbing & Heating of New York, Inc. to be served with the summons and complaint in this action pursuant to New York Business Corporation Law § 306 by delivering the summons and complaint to an agent of the Office of the Secretary of State of the State of New York and leaving them with her on August 5, 2016. An affidavit of service as to Defendant Xcel Plumbing & Heating of New York, Inc. is attached as **Exhibit F**.
- g. I caused Defendant Apple Plumbing, Inc. to be served with the summons and complaint in this

action pursuant to New York Business Corporation Law § 306 by delivering the summons and complaint to an agent of the Office of the Secretary of State of the State of New York and leaving them with her on August 5, 2016. An affidavit of service as to Defendant Apple Plumbing, Inc. is attached as **Exhibit G**.

10. WHEREFORE, Plaintiff Caleb Burch, on behalf of himself and others similarly situated, requests that the default of Defendants V.K. Mechanical, XL Plumbing of New York, Inc., XL Plumbing, Inc., Xcel Plumbing of New York, Inc., Xcel Plumbing & Heating of New York, Inc., Apple Plumbing, Inc., and William Johnston be noted and a certificate of default be issued.

11. I declare under penalty of perjury that the foregoing is true and correct.

Dated: New York, NY
December 8, 2016

/s/ Patricia Kakalec
Patricia Kakalec (PK-8452)
Kakalec & Schlander, LLP
85 Broad Street
New York, NY 10004
Telephone: (212) 500-6114
Facsimile: (646) 612-7996
pkakalec@kakalec-schlander.com

Attorney for Plaintiff

Exhibit A

AFFIDAVIT OF SERVICE

UNITED STATES DISTRICT COURT
EASTERN District of New York

Index Number: 16-CV-3700 (ADS)(SIL)

Date Filed: _____

Plaintiff:

CALEB WESLEY BURCH, on behalf of himself and all others similarly situated,

vs.

Defendants:

V.K. MECHANICAL, ET AL.,

For:

KAKALEC & SCHLANGER, LLP
85 Broad Street
18th Floor
New York, NY 10004

Received by LEGALEASE to be served on WILLIAM JOHNSTON, 45 KEAN STREET, WEST BABYLON, NY 11708.

I, Howard Ettinger, being duly sworn, depose and say that on the 19th day of July, 2016 at 10:43 am, I:

served a **SUITABLE AGE PERSON** by delivering and leaving a true copy of the **SUMMONS, CIVIL COVER SHEET AND CLASS ACTION COMPLAINT** with **MARK WOJECISKI, CO-WORKER** at **45 KEAN STREET, WEST BABYLON, NY 11708**, the said premises being the respondent's place of Work within the State of New York. Deponent completed service by mailing a true copy of the **SUMMONS, CIVIL COVER SHEET AND CLASS ACTION COMPLAINT** in a postpaid envelope addressed to: **45 KEAN STREET, WEST BABYLON, NY 11708** and bearing the words "Personal & Confidential" by First Class Mail on **7/21/2016** and placed in an official depository of the U.S.P.S. in the State of New York.

Description of Person Served: Age: 50, Sex: M, Race/Skin Color: WHITE, Height: 6'2", Weight: 225, Hair: BALD, Glasses: N

I am over the age of eighteen, have no interest in the above action and have the authority to serve process pursuant to CPLR 2103.

Howard Ettinger

Howard Ettinger
Process Server

LEGALEASE
708 Third Avenue
Suite 201
New York, NY 10017
(212) 393-9070

Our Job Serial Number: GOT-2016003022

Subscribed and Sworn to before me on the 21st day of July, 2016 by the affiant who is personally known to me.

Andrea Molody
NOTARY PUBLIC

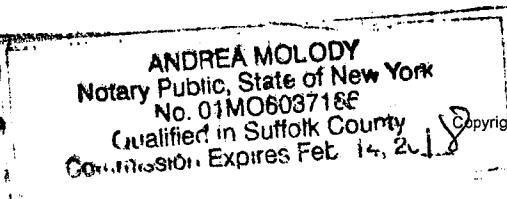


Exhibit B

AFFIDAVIT OF SERVICE

UNITED STATES DISTRICT COURT
EASTERN District of New York

Index Number: 16-CV-3700 (ADS)(SIL)

Date Filed: _____

Plaintiff:

CALEB WESLEY BURCH, on behalf of himself and all others similarly situated,

vs.

Defendants:

V.K. MECHANICAL, ET AL.,

For:

KAKALEC & SCHLANGER, LLP
85 Broad Street
18th Floor
New York, NY 10004



GOT2016003021

Received by LEGALEASE to be served on VK MECHANICAL, 1038 WEST JERICHO TURNPIKE, SMITHTOWN, NY 11787.

I, CARMELO FACCIOLE, being duly sworn, depose and say that on the 17th day of July, 2016 at 2:45 pm, I:

Served the above entity by delivering a true copy of the SUMMONS, CIVIL COVER SHEET AND CLASS ACTION COMPLAINT to: VINCENT TRIMARCO as AGENT at the address of: 1038 WEST JERICHO TURNPIKE, SMITHTOWN, NY 11787, who stated they are authorized to accept service for VK MECHANICAL

Description of Person Served: Age: 53, Sex: M, Race/Skin Color: WHITE, Height: 5'11", Weight: 205, Hair: GRAY/BALDING, Glasses: N

I am over the age of eighteen, have no interest in the above action and have the authority to serve process pursuant to CPLR 2103.

CARMELO FACCIOLE
Process Server

LEGALEASE
708 Third Avenue
Suite 201
New York, NY 10017
(212) 393-9070

Subscribed and Sworn to before me on the 29th day of November, 2016 by the affiant who is personally known to me.

NOTARY PUBLIC

Seth Korin
Notary Public, State of New York
No. 01K06183000
Qualified in Suffolk County
Commission Expires 3/10/2020

Our Job Serial Number: GOT-2016003021

Exhibit C

Attorney(s)

Purchased/Filed: July 6, 2016

AFFIDAVIT OF SERVICE - SECRETARY OF STATE

State of New York

U. S. District Court

Eastern Dist. County

Caleb Wesley Burch on behalf of himself and all others similarly

Plaintiff

against

V.K. Mechanical, et al

Defendant

STATE OF NEW YORK)
COUNTY OF ALBANY) SS
CITY OF ALBANY)**DESCRIPTION OF PERSON SERVED:**

Approx. Age: 55 yrs

Weight: 120lbs Height: 5'1 Sex: female Color of skin: white

Hair color: brown Other: _____

Kyle Warner, being duly sworn, deposes and says: deponent is over the age of eighteen (18) years; that on August 5, 2016, at 12:00 PM, at the office of the Secretary of State of the State of New York located at 99 Washington Ave, 6th Fl, Albany, New York deponent served Summons in a Civil Action & Class Action Complaint

on

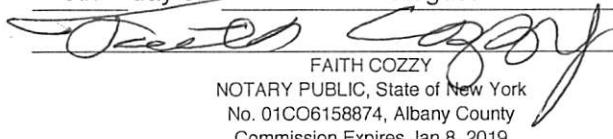
XL Plumbing of New York Inc.

the Defendant in this action, by delivering to and leaving with Nancy Dougherty AUTHORIZED AGENT in the Office of the Secretary of State, of the State of New York, personally at the Office of the Secretary of State of the State of New York, two (2) true copies thereof and that at the time of making such service, deponent paid said Secretary of State a fee of 40 dollars; That said service was made pursuant to Section BUSINESS CORPORATION LAW §306.

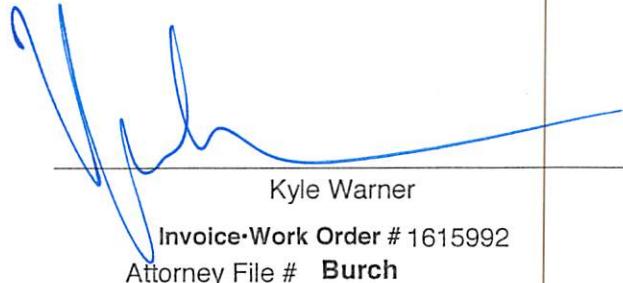
Deponent further says that deponent knew the person so served as aforesaid to be the agent in the Office of the Secretary of State of the State of New York, duly authorized to accept such service on behalf of said defendant.

Sworn to before me on this

5th day of August 2016



FAITH COZZY
NOTARY PUBLIC, State of New York
No. 01CO6158874, Albany County
Commission Expires Jan 8, 2019



Kyle Warner
Invoice-Work Order # 1615992
Attorney File # Burch

State of New York - Department of State
Receipt for Service

Receipt #: 201608100299

Cash #: 201608100295

Date of Service: 08/05/2016

Fee Paid: \$40 - DRAWDOWN

Service Company: 02 ALEXANDER POOLE & CO., INC. - 02

Service was directed to be made pursuant to: SECTION 306 OF THE BUSINESS CORPORATION LAW

Party Served: XL PLUMBING OF NEW YORK INC.

Plaintiff/Petitioner:

BURCH, CALEB WESLEY

Service of Process Address:

CORPORATE FILINGS OF NEW YORK

90 STATE STREET

STE 700, OFFICE 40

ALBANY, NY 12207

Secretary of State
By NANCY DOUGHERTY

Exhibit D

Attorney(s)

Purchased/Filed: July 6, 2016

AFFIDAVIT OF SERVICE - SECRETARY OF STATE

State of New York

U. S. District Court

Eastern Dist. County

Caleb Wesley Burch on behalf of himself and all others similarly

Plaintiff

against

V.K. Mechanical, et al

Defendant

STATE OF NEW YORK)
COUNTY OF ALBANY) SS
CITY OF ALBANY)**DESCRIPTION OF PERSON SERVED:**

Approx. Age: 55 yrs

Weight: 120lbs Height: 5'1 Sex: female Color of skin: white

Hair color: brown Other:

Kyle Warner, being duly sworn, deposes and says: deponent is over the age of eighteen (18) years; that on August 5, 2016, at 12:00 PM, at the office of the Secretary of State of the State of New York located at 99 Washington Ave, 6th Fl, Albany, New York deponent served Summons in a Civil Action & Class Action Complaint

on

XL Plumbing Inc.

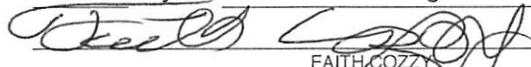
the Defendant in this action, by delivering to and leaving with Nancy Dougherty AUTHORIZED AGENT in the Office of the Secretary of State, of the State of New York, personally at the Office of the Secretary of State of the State of New York, two (2) true copies thereof and that at the time of making such service, deponent paid said Secretary of State a fee of 40 dollars; That said service was made pursuant to Section BUSINESS CORPORATION LAW §306.

Deponent further says that deponent knew the person so served as aforesaid to be the agent in the Office of the Secretary of State of the State of New York, duly authorized to accept such service on behalf of said defendant.

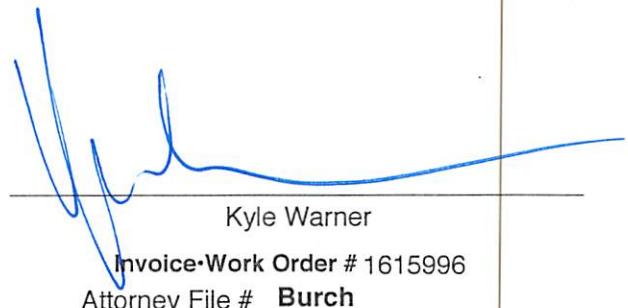
Sworn to before me on this

5th day of

August 2016



FAITH COZZI
NOTARY PUBLIC, State of New York
No. 01CO6158874, Albany County
Commission Expires Jan 8, 2019



Kyle Warner
Invoice•Work Order # 1615996
Attorney File # Burch

**State of New York - Department of State
Receipt for Service**

Receipt #: 201608100300 Cash #: 201608100296
Date of Service: 08/05/2016 Fee Paid: \$40 - DRAWDOWN
Service Company: 02 ALEXANDER POOLE & CO., INC. - 02

Service was directed to be made pursuant to: SECTION 306 OF THE BUSINESS CORPORATION LAW

Party Served: XL PLUMBING INC

Plaintiff/Petitioner:
BURCH, CALEB WESLEY

Service of Process Address:
VINCENT TRIMARCO ESQ
1038 WEST JERICHO TPKE
SMITHTOWN, NY 11787

Secretary of State
By NANCY DOUGHERTY

Exhibit E

Attorney(s)

Purchased/Filed: July 6, 2016

AFFIDAVIT OF SERVICE - SECRETARY OF STATE

State of New York

U. S. District Court

Eastern Dist. County

Caleb Wesley Burch on behalf of himself and all others similarly

Plaintiff

against

V.K. Mechanical, et al

Defendant

STATE OF NEW YORK)
COUNTY OF ALBANY) SS
CITY OF ALBANY)**DESCRIPTION OF PERSON SERVED:**

Approx. Age: 55 yrs

Weight: 120lbs Height: 5'1 Sex: female Color of skin: white

Hair color: brown Other: _____

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on

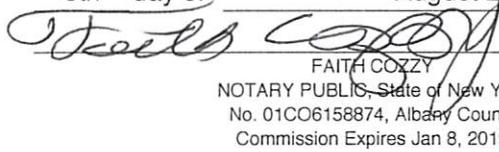
Xcel Plumbing of New York Inc

the Defendant in this action, by delivering to and leaving with Nancy Dougherty AUTHORIZED AGENT in the Office of the Secretary of State, of the State of New York, personally at the Office of the Secretary of State of the State of New York, two (2) true copies thereof and that at the time of making such service, deponent paid said Secretary of State a fee of 40 dollars; That said service was made pursuant to Section BUSINESS CORPORATION LAW §306.

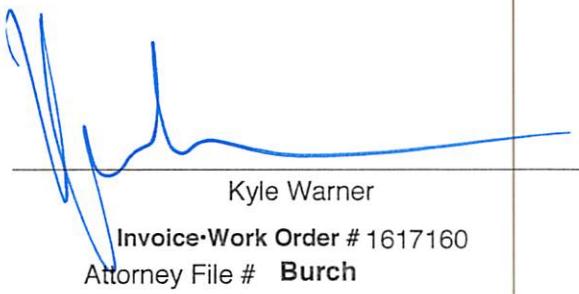
Deponent further says that deponent knew the person so served as aforesaid to be the agent in the Office of the Secretary of State of the State of New York, duly authorized to accept such service on behalf of said defendant.

Sworn to before me on this

5th day of August 2016



FAITH COOZY
NOTARY PUBLIC, State of New York
No. 01CO6158874, Albany County
Commission Expires Jan 8, 2019



Kyle Warner
Invoice Work Order # 1617160
Attorney File # Burch

State of New York - Department of State
Receipt for Service

Receipt #: 201608100297

Cash #: 201608100293

Date of Service: 08/05/2016

Fee Paid: \$40 - DRAWDOWN

Service Company: 02 ALEXANDER POOLE & CO., INC. - 02

Service was directed to be made pursuant to: SECTION 306 OF THE BUSINESS CORPORATION LAW

Party Served: XCEL PLUMBING OF NEW YORK INC.

Plaintiff/Petitioner:

BURCH, CALEB WESLEY

Service of Process Address:

WILLIAM JOHNSTON

45 KEAN ST

WEST BABYLON, NY 11704

Secretary of State
By NANCY DOUGHERTY

Exhibit F

Attorney(s)

Purchased/Filed: July 6, 2016

AFFIDAVIT OF SERVICE - SECRETARY OF STATE

State of New York

U. S. District Court

Eastern Dist. County

Caleb Wesley Burch on behalf of himself and all others similarly

Plaintiff

against

V.K. Mechanical, et al

Defendant

STATE OF NEW YORK)
COUNTY OF ALBANY) SS
CITY OF ALBANY)**DESCRIPTION OF PERSON SERVED:**

Approx. Age: 55 yrs

Weight: 120lbs Height: 5'1 Sex: female Color of skin: white

Hair color: brown Other: _____

Kyle Warner, being duly sworn, deposes and says: deponent is over the age of eighteen (18) years; that on August 5, 2016, at 12:00 PM, at the office of the Secretary of State of the State of New York located at 99 Washington Ave, 6th Fl, Albany, New York deponent served Summons in a Civil Action & Class Action Complaint

on

Xcel Plumbing & Heating of New York Inc

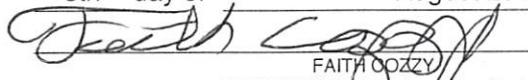
the Defendant in this action, by delivering to and leaving with Nancy Dougherty AUTHORIZED AGENT in the Office of the Secretary of State, of the State of New York, personally at the Office of the Secretary of State of the State of New York, two (2) true copies thereof and that at the time of making such service, deponent paid said Secretary of State a fee of 40 dollars; That said service was made pursuant to Section BUSINESS CORPORATION LAW §306.

Deponent further says that deponent knew the person so served as aforesaid to be the agent in the Office of the Secretary of State of the State of New York, duly authorized to accept such service on behalf of said defendant.

Sworn to before me on this

5th day of

August 2016



FAITH COZY
NOTARY PUBLIC, State of New York
No. 01CO6158874, Albany County
Commission Expires Jan 8, 2019



Kyle Warner
Invoice Work Order # 1617159
Attorney File # Burch

State of New York - Department of State
Receipt for Service

Receipt #: 201608100298

Cash #: 201608100294

Date of Service: 08/05/2016

Fee Paid: \$40 - DRAWDOWN

Service Company: 02 ALEXANDER POOLE & CO., INC. - 02

Service was directed to be made pursuant to: SECTION 306 OF THE BUSINESS CORPORATION LAW

Party Served: XCEL PLUMBING & HEATING OF NEW YORK INC.

Plaintiff/Petitioner:

BURCH, CALEB WESLEY

Service of Process Address:

WILLIAM JOHNSTON

45 KEAN ST

WEST BABYLON, NY 11704

Secretary of State
By NANCY DOUGHERTY

Exhibit G

Index # 2:16-CV-03700-(ADS)

Attorney(s)

Purchased/Filed: July 6, 2016

AFFIDAVIT OF SERVICE - SECRETARY OF STATE

State of New York

U. S. District Court

Eastern Dist. County

Caleb Wesley Burch on behalf of himself and all others similarly

Plaintiff

against

V.K. Mechanical, et al

Defendant

STATE OF NEW YORK)
COUNTY OF ALBANY) SS
CITY OF ALBANY)**DESCRIPTION OF PERSON SERVED:**

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Hair color: brown Other:

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on

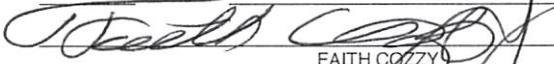
Apple Plumbing Inc

the Defendant in this action, by delivering to and leaving with Nancy Dougherty AUTHORIZED AGENT in the Office of the Secretary of State, of the State of New York, personally at the Office of the Secretary of State of the State of New York, two (2) true copies thereof and that at the time of making such service, deponent paid said Secretary of State a fee of 40 dollars; That said service was made pursuant to Section BUSINESS CORPORATION LAW §306.

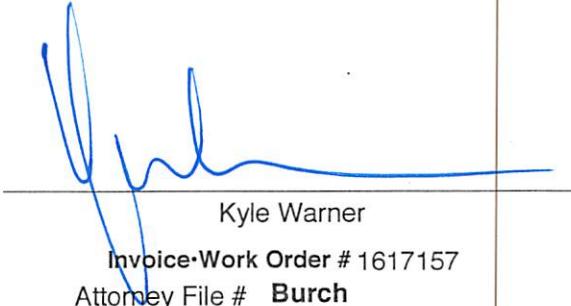
Deponent further says that deponent knew the person so served as aforesaid to be the agent in the Office of the Secretary of State of the State of New York, duly authorized to accept such service on behalf of said defendant.

Sworn to before me on this

5th day of August 2016



FAITH COOZY
NOTARY PUBLIC, State of New York
No. 01CO6158874, Albany County
Commission Expires Jan 8, 2019



Kyle Warner
Invoice-Work Order # 1617157
Attorney File # Burch

State of New York - Department of State
Receipt for Service

Receipt #: 201608100295

Cash #: 201608100291

Date of Service: 08/05/2016

Fee Paid: \$40 - DRAWDOWN

Service Company: 02 ALEXANDER POOLE & CO., INC. - 02

Service was directed to be made pursuant to: SECTION 306 OF THE BUSINESS
CORPORATION LAW

Party Served: APPLE PLUMBING, INC.

Plaintiff/Petitioner:

BURCH, CALEB WESLEY

Service of Process Address:

APPLE PLUMBING, INC.

P.O. BOX 1397

WYANDANCH, NY 11798

Secretary of State
By NANCY DOUGHERTY